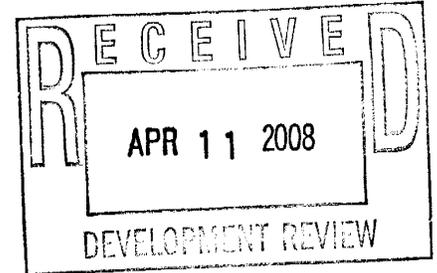


AGENDA DATE: APRIL 17, 2008

AGENDA ITEM: #4

April 11, 2008

Montgomery County Planning Board
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910



RE: Request for Extension of Time;
Project Plan Amendment Application No. 91992004B
4 Bethesda Metro Center

Dear Chairman Hanson and Members of the Planning Board:

The undersigned represent, respectively, Clark Enterprises, Inc., Chevy Chase Bank and Chevy Chase Land Company, property owners that abut or confront the property that is the subject of Project Plan Application No. 91992004B. We are writing in opposition to the Applicant's request for a **third** extension for the scheduling of a public hearing on this application. We object to an extension to as late a date as June 12, 2008, without a more defined purpose for such an extension. We are in favor of an early public hearing on the fundamental threshold issue of whether there is **any** available square footage to accommodate the proposed project plan development. We are convinced that none exists. The vision and explicit direction of the approved and adopted Bethesda CBD Sector Plan do not permit it.

I. BACKGROUND

Project Plan Application No. 91992004B was filed with the Commission on April 19, 2007. The current application is the successor of a prior application proposing what was to be primarily a residential tower to be located in the same place on the Bethesda Metro Center Plaza. The original application was, effectively, amended by filing of the current application proposing a total of 246,084 square feet of office space in addition to replacement of the 50,000 square feet of existing retail and office space.

The application was first scheduled for Planning Board consideration on October 11, 2007, but was rescheduled, at the request of the applicant, so that "...Staff will continue to work with the Applicant and all relevant agencies and interested parties to find a resolution to present to the Board."

The matter was again scheduled for Planning Board review and action on January 17, 2008, but was again deferred for 90 days in the face of numerous unresolved density and Sector Plan compliance issues.

The matter was again scheduled for hearing on March 13, 2008 but the Applicant requested that it be removed from the agenda upon learning that staff was recommending denial.

For this present extension request, the applicant has asked for additional time "to meet with certain interested parties in this proceeding on April 14, 2008 in order to discuss density calculation issues."

II. THE PLANNING BOARD SHOULD HOLD A BIFURCATED PUBLIC HEARING ON DESIGNATED ISSUES

The overriding statutory control to be considered when evaluating the potential for additional development in the Bethesda Metro Center block is Section 59-C-6.2(b) of the Zoning Ordinance, which states:

“The Planning Board may permit not more than the following densities but in no case more than the density recommended in the Sector Plan.”
(emphasis added)

- A. Applicant’s belief that building square footage is available to support its proposal is contrary to past Commission actions and Planning Board decisions in reliance on the Bethesda CBD Sector Plan.

What has become clear in the lengthy processing of this Project Plan Amendment application is that the proposal of Meridian Group presents several questions involving fundamental policy considerations, some of which will create important precedents for future Planning Board decision-making.

The Applicant wishes to construct a 200 foot tall office building containing approximately 295,000 square feet of floor area over the food court and open area that is ringed by tall buildings at the plaza over Bethesda Metro Center. The undersigned have pointed out to Staff, and submitted supporting documents, that under the limitations on construction imposed on the Bethesda Metro Center “block” by the Bethesda CBD Sector Plan, there is **no** available square footage left to accommodate the proposed structure.

The Commission, and Planning Board itself, have confirmed the amount of square footage that can be built in the Bethesda Metro Center block in at least two incidences, including:

1. The Bethesda Metro Center Urban Design Study, published by M-NCPPC, forms the foundation of the Bethesda CBD Sector Plan’s direction.

Text and tables describing the total amount of square footage that can be constructed within the Bethesda Metro Center block is found on pages 1 and 2 of the 1980 Bethesda Metro Center Urban Design Study (Exhibit A). The most direct references to the maximum development potential of the Metro Center block are:

“The CBD-3 zone contains 295,786 square feet of property including area in public right-of-way. It is anticipated that property owners will choose to develop under the optional method, producing a build-out total floor area of 1,183,144 square feet (4 x 295,786 sq. ft.), probably over a period of five to seven years.”
(emphasis added)

and a table contained in the Urban Design Study that reads:

“Property Ownership – CBD-3 Zone, Bethesda, MD”

“Hyman	35,200 sq. ft.
WMATA	115,123 sq. ft.
Montgomery County (Parking District)	45,162 sq. ft.
Lorenz/Hanes (Block 13A)	50,035 sq. ft.
Weitzman/Nagel	10,191 sq. ft.
U. S. Post Office	15,075 sq. ft.
North and East Lane Right of Way	<u>25,000</u>
TOTAL	295,786 sq. ft. = ± 6.5 acres”

The importance of the amount of land area that comprises the Bethesda Metro Center block becomes evident when one realizes two important facts.

First, the development potential of the Metro Center block is capped at 4.0 FAR per the Bethesda CBD Sector Plan’s direction at page 61 (Exhibit B attached):

“In the block containing the Metro Center, individual properties should be permitted to develop under the CBD-3 optional method, provided that the overall density of the area retains an average of 4 FAR, including streets, open space, and public facilities.” (emphasis added)

Second, the total amount of square footage already constructed within the Metro Center block, in reliance on the Urban Design Study, Sector Plan and Zoning Ordinance, has been calculated to be 1,248,937 square feet of building area. Since existing build-out exceeds the Sector Plan’s limit, mathematically, there is no available capacity in the Metro Center block to support the proposed 200 foot office tower.

2. The same conclusion was reached by the Planning Board when it reviewed the final, planned major building to be constructed around the plaza area in the Metro Center block.

Attached is an excerpt from the Staff Report for the Lorenz Building (now the Newlands Building) (Project Plan Application No. 9-82002; Staff report dated October 5, 1982, Exhibit C) in which the Staff noted, and the Planning Board ratified, the calculation that upon approval of the Lorenz Building at a size of 300,232 square feet of building area, the total floor area of the Bethesda Metro Center block would be at 1,161,793 square feet, or 4.03 FAR, de minimis of the 4.0 average FAR established in the Bethesda CBD Sector Plan.

In short, in 1982, upon approval of the Lorenz (now Newlands) Building, the Bethesda Metro Center block was complete and no further significant proposals for additional development could be accommodated without a Sector Plan amendment to

remove the explicit 4.0 FAR limitation and allow for a tower in the plaza area. The Planning Board has consistently, both in its first analysis of the block (Urban Design Study) and the last analysis (Lorenz Project Plan), treated the Bethesda Metro Center block as containing 288,300 square feet of land area¹, which, when multiplied by a factor of 4.0, allows for 1,153,200 square feet of building area. Accordingly, the Planning Board would have to disregard its previous decisions and administrative practices as well as the Sector Plan before approving any part of the applicant's proposal.

III. IN THE ABSENCE OF AMENDMENT OF THE BETHESDA CBD SECTOR PLAN, APPROVAL OF THE SUBJECT PROPOSAL CAN ONLY OCCUR BY EXPANDING THE DEFINED AREA OF THE "BLOCK" TO WHICH THE 4.0 MULTIPLIER IS TO BE APPLIED

The Applicant claims that the development potential of the Bethesda Metro Center block is not limited to the size of the Metro core CBD-3 zoned lots multiplied by 4.0. Meridian claims that the true development potential should be based on land area that is derivatively included in the definition of "floor area ratio". That is, it should be able to include land area "...required for public use that is attributable to the lot or parcel dedicated by the owner or a predecessor in title." (Section 59-A-2.1, "Gross tract area," which is part of the formula for determining "floor area ratio"). To determine if this proposal is reasonable, the Planning Board would have to do **all** of the following:

- A. Disregard its prior actions that defined the Bethesda Metro Center block as only the lots zoned CBD-3; and
- B. Radically reinterpret the specific direction, as well as vision, of the Bethesda CBD Sector Plan, to have tall buildings ringing a central open plaza area over the Metro Center; and
- C. Comprehend a complicated explanation about why dedicated rights-of-way were used to calculate FAR for individual project plans but were not used, nor intended to be used, to "expand" the amount of buildable square footage within the Metro Center block; and
- D. Evaluate "gross tract area" by reviewing a 200 year old chain of title involving investigation of deeds and plats (unless this issue is resolved by the parties in a meeting scheduled for April 14, 2008); and
- E. Make a precedent-setting decision concerning whether land in public ownership through acquisition by "rights of public user" or "prescriptive rights of way" should now be considered "...dedicated [for public use] by the owner or predecessor in title."

In summary, there are a plethora of important threshold questions, with major planning ramifications, that must be resolved before the Planning Board can even think about considering the design merits of the project plan amendment application.

¹ The difference in the 1980 (Urban Design Study) and the 1982 (Lorenz Building approval) square footages in Bethesda Metro Center land area are attributable to the first numbers being based on tax records and the later number being based on platted area.

IV. CONDUCT OF A POSSIBLE M-NCPPC CHARRETTE COVERING BETHESDA METRO CENTER IS NOT A VALID REASON FOR ANOTHER EXTENSION OF TIME

It has been suggested that, notwithstanding the approved and adopted Sector Plan, the “future” of the Bethesda Metro Center might be the subject of a charrette sponsored and managed by M-NCPPC. The undersigned urge that such action would be premature given the facts and policies highlighted above and would implicitly convey the impression of acceptance by the Planning Board of a position that is vigorously opposed by our clients (clients that have faithfully relied upon the Sector Plan and prior project plan approvals) and that has not yet been addressed by the Planning Board. No charrette should be conducted unless the Planning Board first determines there is square footage available in the Metro Center block for more development and, if so, how much more.

V. REASONABLE SOLUTION

As the information set forth above demonstrates, Project Plan Amendment Application 91992004B is not a typical CBD project plan review. The public hearing will not be the normal “design oriented” presentation and analysis.

The Planning Board should first determine whether the project plan is even eligible to be considered in compliance with Section 59-D-2.42 (“Findings requested for approval”). To combine those important public policy determinations with a “design” review is wasteful of the time and money of all of the parties, public and private.

We respectfully suggest that the proper, rational way to handle Project Plan Application No. 91992004B is to, within the next 30 days, conduct a public hearing on the “density” issues outlined above, centering on whether there is any square footage available to be applied to the Meridian proposal and, if so, how much.

Thank you for your consideration of these comments and our proposal to streamline the Planning Board’s review of Project Plan Amendment Application No. 91992004B.

Sincerely,



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Rose Krasnow
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Glenn Kreger
John Carter
Judy Daniel
Debra Daniel, Esquire
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Chevy Chase Bank
Chevy Chase Land Company
Bob Harris, Esquire

BETHESDA METRO CENTER: URBAN DESIGN STATEMENT

January 24, 1980

Prepared by the staff of the Urban Design Division of the Maryland-National Capital
Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, Maryland 20907

EXHIBIT A

Introduction

The Bethesda Metro Center Urban Design Study has been undertaken by the Urban Design Division at the request of the Planning Board of The Maryland-National Capital Park and Planning Commission, in anticipation of development of the CBD-3 Zone in the Bethesda, Maryland central business district. The Planning Board approved the Urban Design Study for submittal to WMATA on January 24, 1980. The study area consists of the area bounded by Wisconsin Avenue, Old Georgetown Road, the proposed Edgemoor Lane relocation, the proposed Woodmont Avenue extension and the existing Montgomery Lane.

Goals of the Study

The study seeks to meet the following goals:

1. To establish criteria for development that will incorporate and accommodate the interests of the public at large.
2. To maximize public and private development potential inherent in the location of the zone at the center of the CBD adjacent to the Bethesda Transit Station.
3. To create an exciting mixed use "place" providing a focus of activity which can extend throughout the day and into the evening.
4. To satisfy and perhaps amplify the implications of the Bethesda Central Business District Sector Plan.
5. To develop Urban Design Guidelines, specifying amenities needed, which can be used by the Washington Metropolitan Area Transit Authority (WMATA) as well as by other property owners in the core area in developing criteria for development of their property. (See Appendices A & B.) These guidelines will form the basis upon which the staff and the Planning Board will judge future optional method applications for the core.
6. To recommend a location for and size of Parking Garage #49.

Description of the Study Area

Zoning, FAR, Height Restrictions, Staging

The Sector Plan permits within the study area the highest density allowed in Bethesda-CBD-3 (see Figure 2). This allows a Floor Area Ratio of three under the standard method of development and a Floor Area Ratio up to eight under the optional method of development under certain conditions. The Sector Plan further states that an average FAR of four is to be considered over the entire zone and that no single property can be developed to more than a FAR of eight. The sector plan suggests a building height limitation of 140' along Woodmont Avenue, but allows for exceptions to this limitation (up to 200') when the Planning Board determines that no serious visual impact on the community will result. Building height along Wisconsin Avenue is limited to 200'.

The CBD-3 Zone contains 295,786 square feet of property including area in public right-of-way. It is anticipated that property owners will choose to develop under the

optional method, producing a built-out total floor area of 1,183,144 square feet (4 x 295,786 sq. ft.), probably over a period of five to seven years. The optional method of development would be required to achieve public amenities of the nature expressed in the Sector Plan; therefore, the optional method of development to a total average FAR of four is encouraged in order to provide the most "people oriented" activity possible in this urban center.

In order to encourage development of the CBD-3 Zone, the Montgomery County Council passed a resolution on January 15, 1980 that effectively raised the Stage I development ceiling by 1,000,000 sq. ft. and required that the area for development of this volume be limited to the CBD-3 Zone. This action allows for applications, construction and occupancy of buildings in the CBD-3 Zone prior to the opening of the Bethesda Metro Station. The Council action assures that adequate square footage will be available to realize the Metro Center plan, and that development activity can proceed as quickly as possible.

On January 24, 1980, the Montgomery County Planning Board approved the Optional Method of Development Application for the construction of the Hyman Building in the CBD-3 Zone. The Hyman Building will contain approximately 350,000 square feet. In return for an FAR of 6.3 the developers of the Hyman Building will provide a portion of the amenity deck (Plaza) over the Metro Station (See Figure 13.) There remains in the CBD-3 Zone adequate square footage availability for the WMATA-Montgomery County parcels and for Block 13A to develop each to an FAR of 4 under the Optional Method of Development.

Property Ownership

The Washington Metropolitan Area Transit Authority (WMATA) is the primary property owner within this zone with 115,123 square feet. The Federal Government (Post Office) owns approximately 15,000 square feet in the southeastern corner of the zone. Remaining property is divided among three major property owners with sufficient property for development under the optional method and three minor property owners. (See Figure 3.)

Property Ownership - CBD-3 Zone, Bethesda, MD.

Hyman	35,200 sq. ft.
WMATA	115,123 sq. ft.
Montgomery County (Parking District)	45,162 sq. ft.
Lorenz/Hanes (Block 13A)	50,035 sq. ft.
Weitzman/Nagel	10,191 sq. ft.
U.S. Post Office	15,075 sq. ft.
North and East Lane Right of Way	<u>25,000</u>
TOTAL	295,786 sq. ft. = ± 6.5 acres

Montgomery County has agreed to sell to WMATA the 45,162 sq. feet in its ownership, providing the WMATA prospectus attracts an acceptable development scheme. The developer of WMATA property can assume that WMATA will have control over both parcels at the time of development.

APPROVED AND ADOPTED

COMPREHENSIVE AMENDMENT TO THE BETHESDA CENTRAL BUSINESS DISTRICT SECTOR PLAN

July 1994

This Sector Plan amends the Bethesda Central Business District Sector Plan, 1976, as amended; being also an amendment to the General Plan for the Physical Development of the Maryland-Washington Regional District, and the Master Plan of Highways within Montgomery County, Maryland; the Master Plan of Bikeways, 1978, as amended; the Master Plan for Historic Preservation, 1979, as amended; the Georgetown Branch Master Plan Amendment, 1990; and the Bethesda-Chevy Chase Master Plan, 1990.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, MD 20910

On the parking deck of the second Air Rights Building, the Plan recommends a small residential building, if compatibility with the adjacent single-family area is maintained. Development should have a maximum height of 90 feet, stepping down to 60 feet toward Pearl Street. The building height should include the existing parking structure. There should be no development on that portion of the deck that abuts the single-family detached houses along Elm Street.

Larger office projects could occur on the Lorenz site, the Hot Shoppes site, along Wisconsin Avenue going north to Cheltenham Drive, and on the Miller property at Elm Street and Woodmont Avenue, discussed below. In the block containing the Metro Center, individual properties should be permitted to develop under the CBD-3 optional method, provided that the overall density of the area retains an average of 4 FAR, including streets, open space, and public facilities. A number of smaller sites would also qualify for optional office development or standard method development.

The Metro Core District should be "infill" in nature and all development should follow the general Sector Plan urban design objectives and principles identified in Section 3.2. The following additional guidelines apply to the Metro Core District (see Figure 4.7):

- a. Reinforce Metro Center as the focus of urban activity. Adjacent properties should develop in a manner that complements the activities and urban open space at Metro Center.
- b. Maintain a compact development with the tallest buildings concentrated in the center. Development at perimeter locations of the Metro Core should step down in height to achieve a more gradual transition and better compatibility with the adjacent areas.
- c. Locate new open space to tie into the existing "Discovery Trail" network and to expand the pedestrian connections. Where appropriate, locate new open space in a manner that reinforces the gateways and provides a transition between districts.
- d. Step down the building height to six floors along East-West Highway for the McDonald's property on Pearl Street.

2. BETHESDA METRO CENTER RECOMMENDATIONS AND DESIGN GUIDELINES

The Plan recommends that conversion of poorly located retail space in the interior of Metro Center 3, to office uses be considered in exchange for various recommended improvements. Additional improvements to the existing Metro Center could help achieve a greater focus of activities, a better sense of community, and a more attractive open space. Recommended improvements include:

 **THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**
8787 Georgia Avenue • Silver Spring, Maryland 20907

TO: Montgomery County Planning Board
FROM: Staff, Urban Design
DATE: October 5, 1982
RE: Project Plan Review #9-82002
The Lorenz Building
Block 13-A - Bethesda, CBD-3 Zone
Application under Optional Method of Development
Northeast corner of Woodmont Avenue (Extended) and Montgomery Lane

Report Outline:

- A. Summary and Recommendations
- B. Basis for Consideration
- C. Amenities and Facilities
- D. Findings
- E. Attachments

A. SUMMARY AND RECOMMENDATION

On May 26, 1982 E. Kendall Lorenz submitted an application for approval under the Optional Method of Development of the Lorenz Building in the core area of Bethesda. The application followed several preliminary meetings with staff and basically conformed to the Urban Design Guidelines of the Bethesda Metro Center Urban Design Study. Staff and applicant worked at regular intervals over the summer to arrive at a satisfactory building configuration in the context of other core area buildings, particularly in terms of building geometry which would "fit" as well as possible. The application was revised to show this consensus. The staff and applicant also worked closely to configure the public amenity space, the major components of which are the Plaza over North Lane and the indoor atrium titled the "winter garden." The application of May 26 showed a more international shopping center type space. The applicant arranged for a highly respected retail consultant to help with conceptual design of the retail component. Staff, applicant, and consultant arrived at a concept which linked the winter garden/retail area more closely with the Plaza activity, and which brought these areas out over North Lane to more closely relate to the ice rink area. In addition, the winter garden was made more transparent and open in feeling. The office tower portion of the project was rotated slightly away from its western orientation to become a triangular tower that bisects the site. Staff was aware that this rotation would conflict somewhat with several of the Urban Design guidelines, but concluded that the change was for the best, all aspects of

CONFORMANCE TO ZONING REGULATIONS - OPTIONAL DEVELOPMENT

Application:	CBD-3 Optional Method	Development Sector 174a
<u>Parcel Size:</u>		
49,785 S.F.	22,000 S.F. min.	-
<u>Amenity Area:</u>		
On-Site = 17,845 S.F.		
Off Site = 12,349 S.F.		
Total = 30,194 S.F.		
% On Site = 36%	20% min	-
<u>Floor Area Ratio:</u>		
$\frac{300,232 \text{ S.F.}}{49,785} = 6.03 \text{ FAR}$	6 FAR max.	-
Total CBD-3 Zone		
$\frac{1,161,793}{288,300} = 4.03 \text{ FAR}$	-	4 FAR Average over entire zone.
<u>Height</u>		
147' from Montgomery Lane at East Lane (Penthouse is additional height.)	143' (200' with Planning Board Approval)	140' - Urban Design Study Guidelines
<u>Setbacks</u>		
0' No setbacks required		
<u>Parking</u>		
725	709	

CBD-3 ZONE - TOTAL DEVELOPMENT

Total Area of CBD-3 Zone = 288,300 S.F. = 6.62 acres.
 Far in CBD = 1,153,200 S.F.

Parcel Development (FAR figures shown)

<u>Existing to remain:</u>		
U.S. Post Office	6,675 S.F.	6,675 S.F.
Weitzman/Nagai	7,210 S.F.	7,210 S.F.
<u>Approved for Construction:</u>		
Clark Enterprises	216,402 S.F.*	216,402 S.F.
R&K Metro Associates	631,274 S.F.	631,274 S.F.
Lorenz (Application)	300,232 S.F. (Staff Rec.)	291,639 S.F.
TOTAL	1,161,793 S.F. (FAR 4.03)	1,153,200 S.F. (FAR 4.0)

for CBD-3 Zone

* Clark floor area attributable to CBD-3 Zone only.